

§ 298.37

section. The Guarantee Fee shall be the aggregate of the amounts calculated for each Vessel.

§ 298.37 Examination and audit.

(a)(1) We shall have the right to examine and audit the books, records (including original logs, cargo manifests and similar records) and books of account, which pertain directly to the project, of the Obligor, bareboat charterer, time charterer or any other Person who has an agreement with respect to control of, or a financial interest in, a Vessel or Shipyard Project, as well as records of a Related Party and domestic agents connected with such Persons, and shall have full, free and complete access to these items at all reasonable times.

(2) We shall have the right to full, free and complete access, at all reasonable times, to each Vessel or Shipyard Project for which Guarantees are in force.

(3) When a Vessel is in port or undergoing repairs, we may make photostatic or other copies of any books, records and other relevant documents or papers being examined or audited.

(b) The Person in control of the premises where we conduct the examination or audit must furnish, without charge, adequate office space and other facilities that we reasonably require in performing the examination, audit or inspection.

§ 298.38 Partnership agreements and limited liability company agreements.

Partnership and limited liability company agreements must be in form and substance satisfactory to us prior to any Guarantee Closing, especially relating, but not limited to:

- (a) Duration of the entity;
- (b) Adequate partnership or limited liability company funding requirements and mechanisms;
- (c) Dissolution of the entity and withdrawal of a general partner or member;
- (d) The termination, amendment, or other modification of the entity without our prior written consent; and
- (e) Distribution of funds or ownership interest.

46 CFR Ch. II (10–1–06 Edition)

§ 298.39 Exemptions.

We may exempt an applicant from any requirement of this part, unless required by statute or other regulations, in exceptional cases, on written findings that:

(a) The case materially involves factors not considered in the promulgation of this part;

(b)(1) A national emergency makes it necessary to approve the exemption, or

(2) The exemption will substantially relieve the financial liability of the United States;

(c) The exemption will not substantially impact effective regulation of the Title XI program, consistent with the objectives of this part;

(d) The exemption will not be unjustly discriminatory; and

(e) For Eligible Export Vessels, such exemption would assist in creating financing terms that would be compatible with export credit terms for the sale of vessels built in shipyards other than those in the United States.

Subpart E—Defaults and Remedies, Reporting Requirements, Applicability of Regulations

§ 298.40 Defaults.

(a) *In General.* Provisions concerning the existence and declaration of a default and demand for payment of the Obligations (described in paragraphs (b) and (c) of this section) shall be included in the Security Agreement and in other parts of the Documentation.

(b) *Principal and interest Payment Default.* Unless we have assumed the Obligor's rights and duties under the Obligation and agreements and have made any payments in default under terms in the Obligation or related agreements, the following procedures regarding principal and interest payment default shall apply:

(1) No demand shall be made for payment under the Guarantees unless the default shall have continued for 30 days (Payment Default).

(2) After the expiration of said 30-day period, demand for payment of all amounts due under the Guarantees must be made no later than 60 days afterward.

(3) After demand for payment is made by or on behalf of the Obligees, we shall make payment under the Guarantees, except if we determine that a Payment Default has not occurred or that such Payment Default has been remedied prior to demand being made.

(c) *Security Default.* If a default occurs under the Security Agreement which is other than a Payment Default (Security Default), section 1105(b) of the Act allows us, in our sole discretion, to declare such default a Security Default, and we may notify the Obligee or agent of the Obligee of such Security Default, stating that demand for payment under the Guarantees must be made no later than 60 days after the date of such notification.

(d) *Payment of Guarantees.* If we receive notice of demand for payment of the Guarantees, we shall, no later than 30 days after the date of such demand (provided that we shall not have, upon such terms as may be provided in the Obligations or related agreements, prior to that demand, assumed the Obligor's rights and duties under the Obligation and agreements and shall have made any payments in default), make payment to the Obligees, Indenture Trustee or any other agent of the unpaid principal amount of Obligations and unpaid interest accrued and accruing thereon up to, but not including, the date of payment.

§ 298.41 Remedies after default.

(a) *In general.* The Security Agreement or other parts of the Documentation shall include provisions governing remedies after a default, which relate to our rights and duties, the rights and duties of the Obligor, and other appropriate Persons.

(b) *Action by the Secretary.* (1) We may take the Vessel or Shipyard Project and hold, lease, charter, operate or use the Vessel or Shipyard Project, accounting only for the net profits to the Obligor after a default has occurred and is continuing and before making payment required under the Guarantees.

(2) After making payment required under the Guarantees, we may initiate or otherwise participate in legal proceedings of every type, or take any other action considered appropriate, to

protect rights and interests granted to us under:

- (i) Sections 1105(c), 1105(e) and 1108(b) of the Act,
- (ii) The Security Agreement,
- (iii) Other applicable provisions of law, and
- (iv) The Documentation.

(c) *Security proceeds to Secretary.* Our interest in proceeds realized from the disposition of or collection regarding the security granted to us in consideration for the Guarantees (except all proceeds from the sale, requisition, charter or other disposition of property purchased by us at a foreclosure or other public sale, which proceeds shall belong to and vest exclusively in us), shall be an amount equal to, but not in excess of, the sum of (in order of priority of application of the proceeds):

(1) All moneys due and unpaid and secured by the Mortgage or Security Agreement;

(2) All advances, including interest thereon, by us, under the Security Agreement and all our reasonable charges and expenses;

(3) The accrued and unpaid interest on the Secretary's Note;

(4) The accrued and unpaid balance of the principal of the Secretary's Note; and

(5) To the extent of any collateralization by the Obligor of other debt due to us from the Obligor under other Title XI financings, such other Title XI debt.

(d) *Security proceeds to Obligor.* You shall be entitled to the proceeds from the sale or other disposition of security, described in paragraph (c) of this section, if and to the extent that the proceeds realized are in excess of the amounts described in paragraphs (c)(1) through (5) of this section.

§ 298.42 Reporting requirements—financial statements.

(a) *In general.* The financial statements of the Company shall be audited at least annually, in accordance with generally accepted auditing standards, by independent certified public accountants licensed to practice by the regulatory authority of a State or other political subdivision of the United States or, licensed public accountants licensed to practice by the